IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6318 OF 2005

Smt.S.J. Thombare and ors. ..Petitioners.

Vs.

Namdeo S. Kale and ors. ..Respondent

Mr.M.S. Lagu for the Petitioners.
Mr.K.S.Sonwalkar for the Respondents.

CORAM : R.S. MOHITE,J.
DATED : 01/12/2005.

P.C.

1. Heard both sides.

2. Rule.

3. By consent, rule made returnable forthwith.

4. The petitioners are the original defendants in a suit filed by the respondents being R.C.S.No.48/1991 pending on the file of Civil Judge, J.D. Malshiraas. The suit was for possession of the suit land and the area of the suit was 20-Ares. On the basis of the measurement made by the TILR wherein TILR found the encroachment made by the defendants was 32 -Ares, an application was made in the year 2002 for an amendment

seeking possession of 32-Ares instead of 20-Ares. The said application was rejected. After the evidence was led, a second application again seeking same amendment to the plaint was filed on 11.7.2005. This second application has been allowed. In my view, the first application was also based upon the measurements of the TILR and the second application seeking the same amendment which was rejected earlier could not have been allowed. Hence, petition made absolute in terms of prayer clause (a). It is made clear that the respondents will be at liberty to file a fresh suit for recovery of possession of rest of the land, if permissible by law. Rule is made absolute in the aforesaid terms.

(R.S. MOHITE, J.)